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SUITE 2040  
MILWAUKEE, WI 53202-4497

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**MAR 19 2002**

In re Application of  
Labadie et al.  
Application No. 09/259,619  
Filed: March 1, 1999  
Attorney Docket No.  
210655.90018

**OFFICE OF PETITIONS**

DECISION ON PETITION

This is a decision on the Petition to revive the above-identified application under 37 CFR 1.137(b), filed February 11, 2002 (Certificate of Mailing dated February 8, 2002).

This Petition is hereby dismissed as moot.

A final Office action was mailed August 8, 2001, which set a shortened statutory period for reply of three (3) months. That period was extendable up to three (3) months. Petitioner filed a request for a three (3) month extension of time and an Amendment on February 11, 2002, however, the extension of time and Amendment included a Certificate of Mailing dated February 8, 2002.

Under 37 CFR 1.8, this Office will consider correspondence as being timely filed as follows:

"correspondence required to be filed in the Patent and Trademark Office within a set period of time will be considered timely filed if the procedure described in this section is followed. The actual date of receipt will be used for all other purposes.

(1) Correspondence will be considered as being timely filed if:

(I) The correspondence is mailed or transmitted prior to the expiration of the set period of time by being:

(A) Addressed as set out in § 1.1(a) and deposited with the U.S. Postal Service with sufficient postage first class mail; or

(B) Transmitted by facsimile to the Patent and Trademark Office in accordance with § 1.6(d); and

(ii) The correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission. The person signing the certificate should have a reasonable basis to expect that the correspondence would be mailed or transmitted on or before the date indicated.


Petitioner included a Certificate of Mailing dated February 8, 2002 on the Amendment and extension of time request properly addressed to this Office. Accordingly, the above-identified application was never abandoned.

With the instant petition, Petitioner paid the petition fee, submitted a Request for Continued Examination ("RCE"), and fee, and filed a submission in the form of an Amendment. However, the Amendment was timely filed prior to the application becoming abandoned, rendering the petition, RCE and Fee unnecessary.

Accordingly, the petition is dismissed as moot. The petition and RCE fees have been refunded to Petitioner's deposit account, number 17-0055, as authorized in the Fee Transmittal.

This application is being returned to Technology Center AU 2176 for processing of the Amendment.

Telephone inquiries concerning this matter should be directed to the undersigned at (703) 305-0014.

  
Derek L. Woods  
Petitions Attorney  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy